

to McGovern taken in view of U.S. Patents No. 3,835,117 and No. 3,897,380 to Walaschek, U.S. Patent No. 5,180,428 to Koleas and JP-A-52-19855 to Toho Tennen Gas KK.

The above references have been cited as making out a *prima facie* case of obviousness. This asserted *prima facie* obviousness rejection is overcome by the Declaration submitted herewith, which documents new and unexpected results in the present invention over the teachings of the prior art.

In view of the dispositive nature of the enclosed rebuttal, and the ability of the objective evidence to overcome the rejection of record and to place this application in condition for allowance, the Examiner is respectfully requested to enter the accompanying Declaration and to allow claims 1-10.

The *prima facie* rejection is premised upon the conclusion that since it is known to add rubber or rubber latex to asphaltic pavement coating compositions to enhance bonding, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add an elastomer to the pavement rejuvenator of McGovern. However, as the accompanying Declaration of Edward McGovern shows, the teachings of record to add elastomer to an asphalt composition do not suggest adding an elastomer to a coal tar composition such as that of the present invention, and in any case do not point to the surprising results obtained when elastomer and coal tar products are combined according to the present claims.

As shown in Paragraph 4. of the McGovern Declaration, a comparative evaluation was designed in which sand-covered coatings of the present invention were prepared alongside sand-covered coatings containing asphalt and elastomer, as well as sand-covered coatings of coal tar and asphalt compositions

without elastomer to serve as controls. As described in Paragraph 5., the resulting coatings were abraded under identical conditions to determine percentage sand loss. The results of the abrasion are shown in Table I.

As Mr. McGovern identifies in Paragraph 6., "the addition of elastomer to the coal tar derivative according to the present invention gave astonishingly and unexpectedly improved results over asphalt with or without elastomer or the coal tar derivative alone." The data are compelling, with the sand loss for the coal tar derivative plus elastomer coating actually amounting to a measured zero percent. No other panel tested even approached this noteworthy result. Moreover, since coal tar derivative without elastomer bonds sand virtually as well as asphalt with elastomer, one skilled in the art would not have been motivated ever to try adding elastomer to the present coal tar derivative, as claimed.

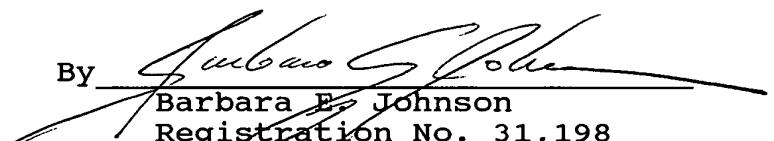
Because the record now rebuts the asserted *prima facie* obviousness rejection with test results performed and reported by Mr. Edward McGovern in his Declaration submitted herewith, it can be seen that the *prima facie* obviousness rejection is appropriate for withdrawal. The Examiner is respectfully requested to allow claims 1-10 and to pass this application along for issuance.

A two-month Petition for Extension of Time is filed concurrently herewith.

Respectfully submitted,

WEBB ZIESENHEIM BRUENING LOGSDON
ORKIN & HANSON, P.C.

By


Barbara E. Johnson
Registration No. 31,198
Attorney for Applicant
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
Telephone: 412-471-8815
Facsimile: 412-471-4094